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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,233	12/15/2003	Allan Coopersmith	001	4616

7590

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EXAMINER

LEWIS, RALPH A

ART UNIT

PAPER NUMBER

3732

DATE MAILED: 03/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/734,233

Applicant(s)

COOPERSMITH, ALLAN

Examiner

Ralph A. Lewis

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20 is/are allowed.
- 6) ☒ Claim(s) 1-6 and 10-13 is/are rejected.
- 7) ☒ Claim(s) 7-9, 14-19 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

Objection to the Drawings

The drawings are objected to under 37 CFR 1.84 (m) as being improper for having solid black shading. Replacement drawings are required.

Rejections based on Prior Art

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Hagne (US 4,871,311).

Hagne discloses a device for retracting gingival tissue comprised of closed loop and two materials an expansible stocking material 5 and a cord core material 6.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hagne (US 4,871,311) in view of Porteous et al (4,617,950).

Porteous et al teach the use of a wet gel/paste material applied to a gingival retraction device in order to help control the bleeding that often occurs during gingival retraction. To have applied a wet gel/paste material with the Hagne gingival retraction device in order to help control the bleeding as taught by Porteous et al would have been obvious to one of ordinary skill in the art. Additionally, in regard to claims 11 and 13, the application of the gel/paste material directly to the gingival tissue to which the retraction device is applied, rather than to the retraction device itself would have been obvious to one of ordinary skill in the art as a matter of routine. (e.g. most any parent knows that you can apply the first aid cream either to the band aid or the cut/scrape itself.)

Prior Art

Snead (US 3,541,689), Holmes (US 3,151,393), Robertson (US 3,238,620), Porteous (US 4,321,038), Gores (US 4,396,375), Ticknor (US 4,465,462), Oliva (US 5,022,859), Groth (US 5,480,303), Earle (US 5,540,588) and Summet (US 5,899,694) are made of record.

Allowable Subject Matter

While the prior art of record teaches the use of probe-like push tools for pushing gingival retraction devices into place (e.g. Gores 4,396,375; Oliva 5,022,859) it lacks a fair teaching of a cap or restoration for accomplishing the claimed method step of


Art Unit: 3732

pushing the retraction device into place. Accordingly, claims 7-9 and 14-19 are objected to as being dependent on a rejected base claim, but would be allowable if rewritten in independent form and claim 20 is allowed.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication should be directed to **Ralph Lewis** at telephone number **(571) 272-4712**. Fax (703) 872-9306. The examiner works a compressed work schedule and is unavailable every other Friday. The examiner's supervisor, Kevin Shaver, can be reached at (571) 272-4720.

R.Lewis
December 13, 2004
February 04, 2005


Ralph A. Lewis
Primary Examiner
Au 3732